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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,773	09/04/2001	Ulrich Upmeyer	UPMEYER=4	4160
1444	7590	09/23/2005		EXAMINER
BROWDY AND NEIMARK, P.L.L.C.				BRAHAN, THOMAS J
624 NINTH STREET, NW				
SUITE 300			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20001-5303			3652	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/914,773	UPMEYER, ULRICH	
	<b>Examiner</b> Thomas J. Braham	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 June 2005.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date. _____.	6) <input type="checkbox"/> Other: _____.

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The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. In claim 6, it is unclear as to how the applicant is considering the machine as having a moving device (14) on a drive frame (12). Figure 1 shows element 14 at one portion of the machine. Figure 2, shows it at a different portion. It is unclear as how element 14 moves. These claims have not been treated below with rejections based upon prior art.

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The term "RFZ" inserted into the first line of claim 1 is not understood.
- b. It is unclear as to how the applicant is using the terms "receptacle" and "fork" within claim 1, and how this receptacle can also be considered as a "mandrel", as recited in claim 15. Claim 15 has not been treated below with the rejections based on prior art as it contradicts claim 1 from which it depends.
- c. In claim 6, the term "the fork frame" lacks antecedent basis within the claims.
- d. In claim 6, it is unclear as to how the applicant is considering the machine as having a moving device (14) on a drive frame (12).
- e. In claim 7, the term "the height region of the fork" lacks antecedent basis within the claims and is not understood.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirement of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3, as best understood, are rejected under 35 U.S.C. § 102(e) as being anticipated by Seaberg. Seaberg discloses a shelf stacking machine for storing and retrieving paper reels, which is movable in an aisle between storage positions on both sides that hold paper reels stored above one another and spaced apart in the longitudinal direction of the aisle, and has a receptacle for a paper reel, characterized in that the receptacle formed by a fork that is vertically pivotable around a horizontal axis and incorporates measuring devices (see column 3, lines 45-57) that detect the carrying load of a picked-up paper reel the receptacle further comprising an actuator (42a and other controls) to which detected measuring data are transmitted via a control means, the actuator being coupled to the fork to vertically pivot the fork accordance with the measuring data and into a horizontal position (see the last line of column 3) to hold said fork in this horizontal position during transport of the paper reels. The fork has circular shaped gripping forks, as recited in claim 3.

Claim 2, as best understood, is rejected under 35 U.S.C. § 103(a) as being unpatentable over Seaberg in view of Lanza et al. Seaberg shows the basic claimed forklift sensor system, as detailed above. It uses mechanical, magnetic or optical sensors, see column 3, lines 55-57, but varies from claim 2 by not using ultrasound sensors. Lanza et al shows a similar system which uses ultrasound sensors. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the fork lift control system of Seaberg by using ultrasound sensors, as these are well known sensors common in this art, as taught by Lanza et al.

Claims 1 and 3-5, as best understood, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Broersma in view of Seaberg. Broersma shows the basic claimed load handling machine. It inherently can go between aisles to shelves and can lift paper reels. It varies from the claims by not having sensors to balance the loading. Seaberg shows a similar system with a clamp with sensors to automatically position the loads. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the handling machine of Broersma by providing the clamp with a sensing system for automatic positioning of the load, as taught by Seaberg. The gripping forks of Broersma have circular arc shaped sections, as recited in claim 3, and have the horizontal pivot axis (at 27) above the fork frame, as recited in claim 4. The horizontal axis (at 27) also can be considered as the rotating ring of claim 5 that suspends the fork.

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Applicant's remarks in the amendment filed June 6, 2005, have been fully considered, but are deemed moot in view of the above new rejections. The amendment necessitated the new grounds, accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (571) 272-6921. The examiner's supervisor, Ms. Eileen Lillis, can be reached at (571) 272-6928. The new fax number for all patent applications is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas J. Brahan  
Primary Examiner  
Art Unit 3652